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10/648,778

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EXAMINER

TORRES, MARCOS L

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/648,778

Applicant(s)

RANTA-AHO ET AL.

Examiner

Marcos L. Torres

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11-24-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group I claims 1-9 and 28-29 in the reply filed on 4-19-2007 is acknowledged. The traversal is on the ground(s) that the invention are not independent and distinct because they are connected in terms of operation and one cannot be used without the other. This is not found persuasive because the means and steps in the mobile device are not the same as the means and step of the base station, in other words the mobile station does not carry the step of the base station and vice versa. A base station is a totally different entity than a mobile station. Although they can be used together the means and steps of each group are different. And this fact is shown by their different art classification, which includes both class and sub-class.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 10-27 and 30-43 (new claims are directed to groups II and III respectively) are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II and III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4-19-2007.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Specification***

4. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

***Claim Objections***

5. Claims 28 and 19 are objected to because of the following informalities: the claims are directed to a computer program product, however the claims depend on a method claim, thereby creating a hybrid claim. It is unclear if the claim is directed to a method or a computer program. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 28 and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention falls in a judicial exception of an abstract idea (claimed computer program) without a practical application by physical transformation and without a useful and tangible result.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-5 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) in view of Beyer US007184413B2.

As to claim 1, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method for use by a user equipment device and Node Bs of a wireless telecommunication system, the method for enabling

Node B based control during soft handover of the maximum data rate allowed for uplink by the user equipment device as indicated by a pointer in the user equipment device, the soft handover resulting in a change of a controlling Node B from a first one of the Node Bs to a second one of the Node Bs, each of the Node Bs for providing commands for control of user equipment devices in at least one respective cell so that the user equipment device in soft handover is simultaneously in at least two cells each possibly controlled by a different one of the Node Bs, the method comprising: and issuing scheduling commands for controlling the pointer in the user equipment device if it is in control, but issuing no such commands if it determines it is not in control of the scheduling cell (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4). 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art

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at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 2, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method further comprising: the user equipment device and also the Node B in control of the scheduling cell each synchronizing a respective pointer for indicating the maximum allowed uplink data rate for the user equipment device to a value according to a synchronization procedure (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 3, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 4, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to a predetermined value (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 5, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release

6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method of claim 2, wherein according to the synchronization procedure, both the Node B and the user equipment device set their respective pointers according to predetermined criteria (see sections 7.1.1-7.1.1.3, 7.3.2).

As to claims 28 and 29, they are rejected for the same reasons as shown above in claim 1.

12. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) in view of Beyer as applied to claims 1 and 2 above, and further in view of the admitted prior art.

As to claim 7, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) disclose the method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell or to a predetermined value (see sections 7.1.1-7.1.1.3, 7.3.2), 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) do not specify to use whichever is greater. The admitted prior art discloses that is known to use whichever is greater (see page 1, line 21-26). Therefore, it would have been obvious to one of the



ordinary skill in the art at the time of the invention to use the faster so the user can have the fastest connection available, thereby increasing user satisfaction.

As to claim 6, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) disclose the method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to a value it selects (see sections 7.1.1-7.1.1.3, 7.3.2). 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) do not specifically disclose explicitly signals the value to the user equipment device. However using explicit signaling (for example: set a value of 10) is a design choice within the knowledge of one of the ordinary skill in the art, if is interested in changing the value he may explicitly use the desired value.

As to claims 8 and 9, 3<sup>rd</sup> Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) and Beyer disclose everything as explained above (see claim 1) except for the method wherein the Node B based control is provided using differential signaling. However, in the admitted prior art the applicant admits that it know to use differential signaling to control the Node B (see page 1, col. 21-29). Moreover, choosing between using differential signaling (for example: increase by a value of 10) and explicit signaling (for example: set a value of 10) is a design choice within the knowledge of one of the ordinary skill in the art, if one of the ordinary

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skill in the art is interested in keep track of the changes he may use differential signaling if is only interested in changing to the desired value he may use explicit. Both are a common and well-known technique.

***Conclusion***

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Hand delivered responses should be brought to:

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcos L. Torres whose telephone number is 571-272-7926. The examiner can normally be reached on 8:00am-6:00 PM alt. Wednesday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-252-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Marcos L Torres  
Examiner  
Art Unit 2617

  
mlt

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER